

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 14, 2018

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

**Consent to Assignment of General Lease No. S-5188, Kona ABC LLC,
Assignor, to Valencia Gateway Retail IV, LLC, Assignee, for Commercial
Purposes, Auhaueae 2nd, North Kona, Hawaii, Tax Map Key: (3) 7-5-009:
043.**

APPLICANT:

Kona ABC LLC, a Hawaii limited liability company, as Assignor, to Valencia Gateway Retail IV, LLC, a Delaware limited liability company, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Auhaueae 2nd, North Kona, Hawaii, identified by Tax Map Key: (3) 7-5-009: 043, as shown on the attached map labeled Exhibit A.

AREA:

0.338 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Commercial purposes as may be permitted under the zoning ordinances of the County of Hawaii.

TERM OF LEASE:

50 years, commencing on May 19, 1989 and expiring on May 18, 2039. Last rental reopening occurred on May 19, 2009; next rental reopening is scheduled for May 19, 2019.

ANNUAL RENTAL:

\$31,150.00 with semi-annual payments due on May 19th and November 19th.

CONSIDERATION:

\$ 175,000.00.

RECOMMENDED PREMIUM:

\$ 3,287.00. (Refer to attached Exhibit B)

DCCA VERIFICATION:

ASSIGNOR: KONA ABC LLC

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Good standing confirmed:	YES

ASSIGNEE: VALENCIA GATEWAY RETAIL IV, LLC

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Good standing confirmed:	YES

BACKGROUND:

General Lease No. S-5188 (GL 5188) covering Tax Map Key: (3) 7-5-09:43 (Parcel 43) was sold at public auction on May 18, 1989 to Lanihau Partners L.P. (Lanihau). As the successful bidder, Lanihau, was issued a 50-year lease for commercial purposes. Through mesne assignments with consent of the Board of Land and Natural Resources, the lease was assigned to Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson (Andersons), pursuant to Board action of January 8, 2010, item D-15.

Parcel 43 is centrally located in Kailua-Kona, and is surrounded by a commercial development known as the Coconut Grove Marketplace (Marketplace); occupying Tax Map Keys: (3) 7-5-009:025, 027 & 028 (refer to Exhibit A). The original lessee, Lanihau, was the owner/developer of the Marketplace. Lanihau and successive lessees have maintained Parcel 43 as a landscaped open area with a sand volleyball court. The volleyball court functions as a component of a larger drainage system for the Marketplace. In heavy rains, an underground system of drains and pipes collects surface runoff from the surrounding Marketplace, as well as Kuakini Highway, and directs the runoff to a discharge point on Parcel 43. Runoff exits the discharge point and enters the sand volleyball court and surrounding area, which act as a detention basin. Staff understands that beneath the sand of the volleyball court is a porous lining over an aggregate base that allows the water to percolate into the ground.

In 2010 ownership of the Marketplace was transferred from the Andersons to LSREF2 OREO (DIRECT), LLC (LSREF2) due to a mortgage foreclosure. This resulted in the Marketplace and Parcel 43 being controlled by different parties who were at odds over the continued use of Parcel 43 as an integral component of the Marketplace parcels. This situation persisted until early 2016 when, by letter dated February 16, 2016, the attorney for LSREF2 advised Land Division that the parties had settled their dispute.

At its meeting of August 26, 2016, item D-3, the Board consented to the assignment of GL 5188 from the Andersons to their limited liability company, Kona ABC LLC (current lessee). Also at that meeting, the Board consented to the assignment of 100% membership interest in Kona ABC LLC from the Andersons to LSREF2.

REQUEST:

In August 2017, LSREF2, conveyed its ownership of the Marketplace to Coconut Grove Retail XIII, LLC. So as to avoid previous complications stemming from different controlling entities of integral components of the Marketplace, LSREF2 as the sole member of Kona ABC LLC is seeking consent to the assignment of GL 5188 to Valencia Gateway Retail IV, LLC, who is an affiliate of Coconut Grove Retail XIII, LLC.

The covenants of the lease allow the Board to condition its consent on payment by the Lessee of a premium based on the amount by which the consideration exceeds the Adjusted Depreciated Cost of Improvements as calculated in accordance with the Assignment of Lease Evaluation Policy. Staff has performed the calculations and has determined that a premium of \$ 3,287.00 is warranted (refer to attached Exhibit B for the calculations).

The lessee is in compliance with all lease terms and conditions. The assignee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION:

That the Board consent to the assignment of General Lease No. S-5188 from Kona ABC LLC, as Assignor, to Valencia Gateway Retail IV, LLC, as Assignee, subject to the following:

1. Payment of an assignment premium of \$ 3,287.00;
2. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
3. Review and approval by the Department of the Attorney General; and
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:

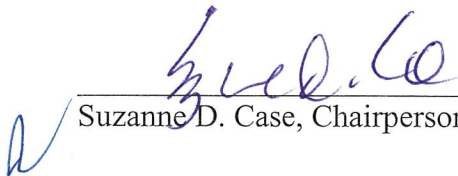
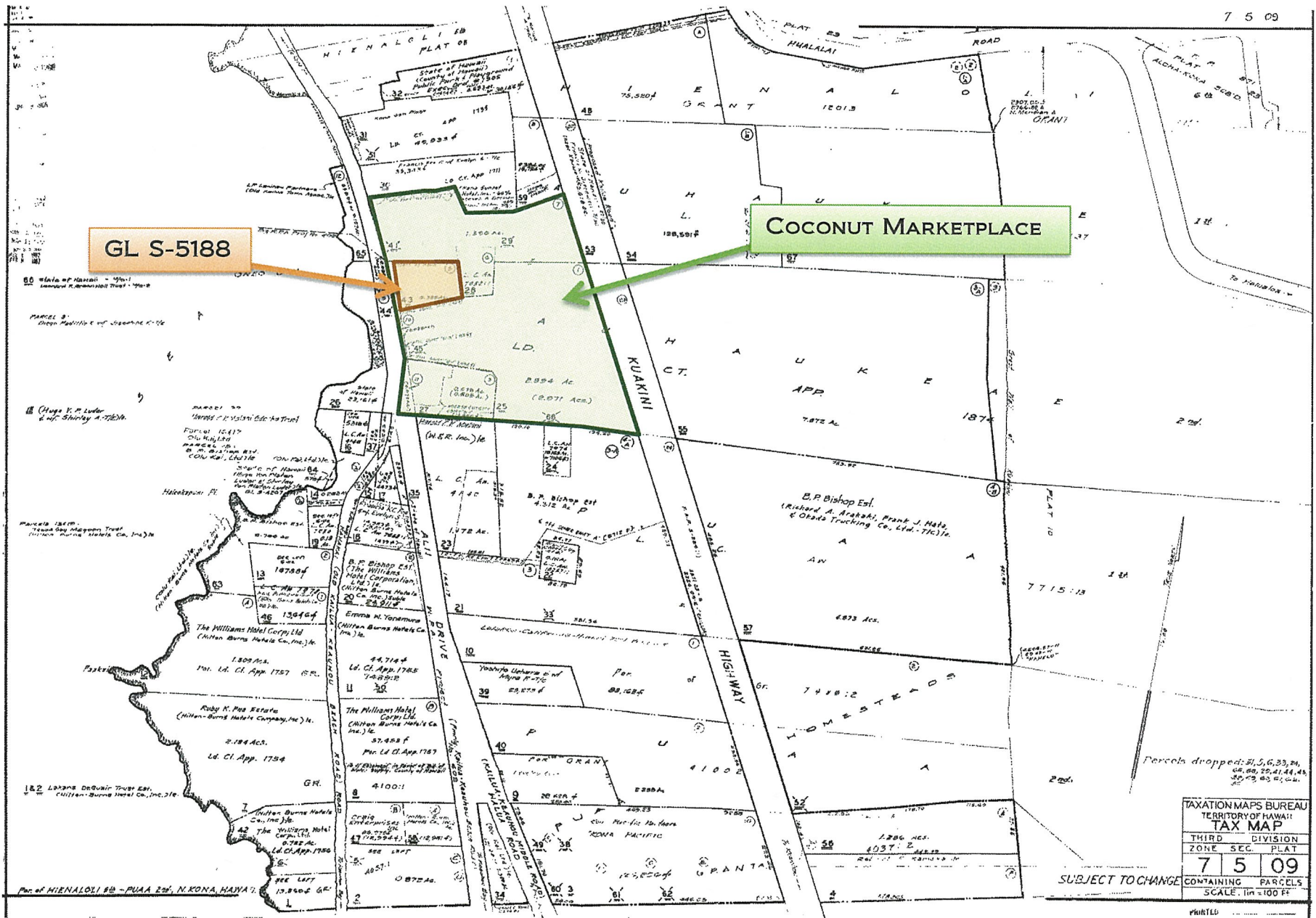

Suzanne D. Case, Chairperson

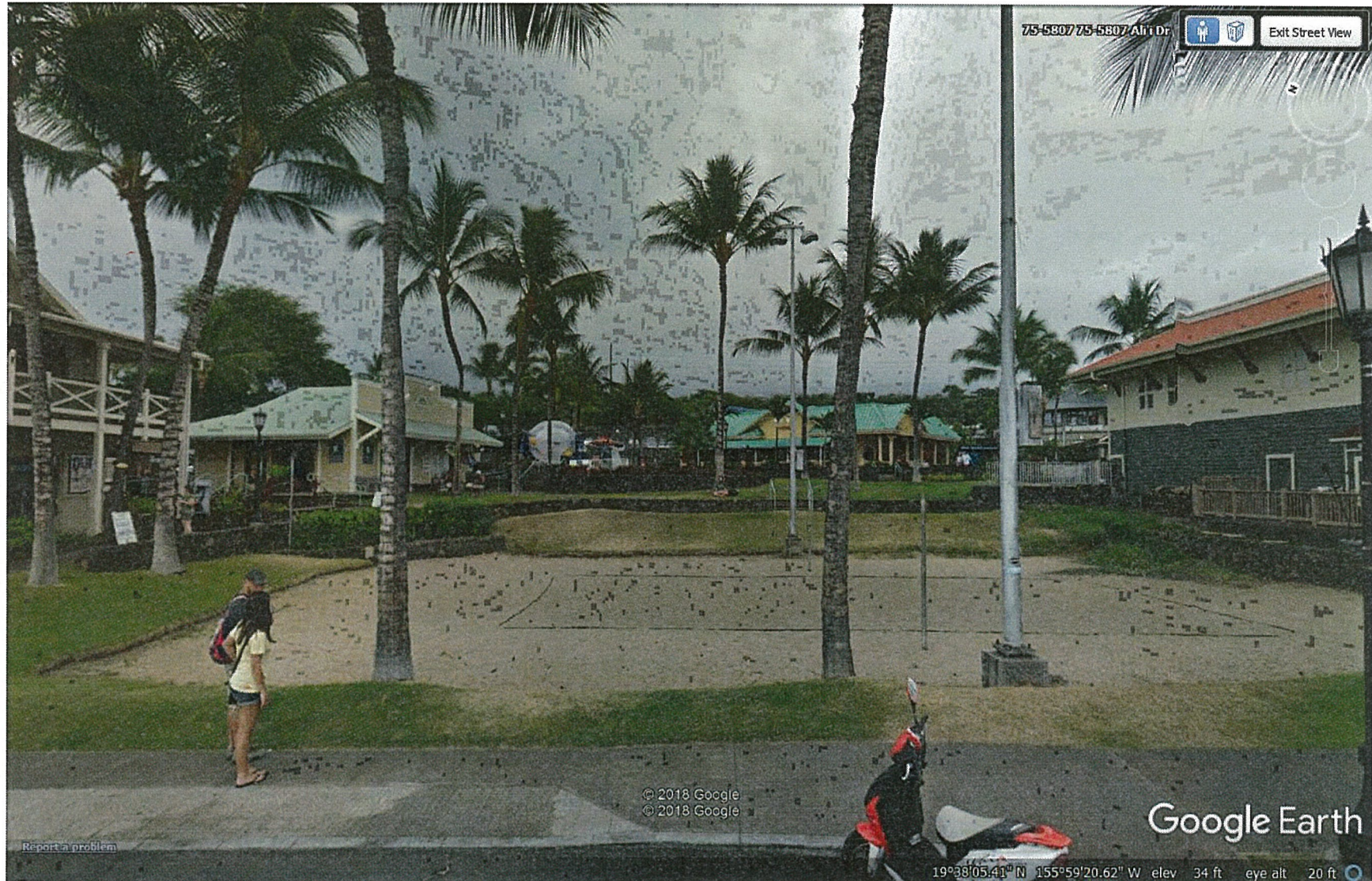
EXHIBIT A

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Streetside view of subject parcel showing sand volleyball court.

EXHIBIT A



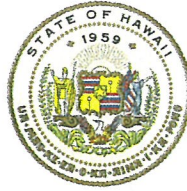


EXHIBIT B

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

75 Aupuni Street, Room 204
Hilo, Hawaii 96720
PHONE: (808) 961-9590
FAX: (808) 961-9599

August 1, 2018

MEMORANDUM

TO: Suzanne D. Case, Chairperson

THROUGH: Russell Y. Tsuji, Division Administrator

FROM: Candace Martin, Land Agent

SUBJECT: In-House Recommendation – Assignment Premium Calculation

GL No.:	S-5188
Lessee/Assignor:	Kona ABC LLC
Assignee:	Valencia Gateway Retail IV, LLC
Location:	Auhaukeae 2nd, North Kona, Hawai'i
Lease area:	0.338 acres.
Tax Map Key:	(3) 7-5-009:043
Character of Use:	Commercial purposes

Staff has been requested to provide an in-house evaluation of the assignment premium due to the State for the assignment of GL S-5188 from Kona ABC LLC, Assignor, to Valencia Gateway Retail IV, LLC, Assignee. The assignment document and other pertinent information provided by Lessee were analyzed and staff applied the formula approved by the Land Board on December 15, 1989, agenda item F-10, and modified by the Board at its meeting on June 13, 2003, agenda item D-28, comprising the Assignment of Lease Evaluation Policy.

General Lease No. S-5188 was sold at public auction for commercial use on May 18, 1989. The lease is for a period of 50 years, commencing on May 19, 1989 and expiring on May 18, 2039. The leased premises were developed as a drainage/detention basin serving adjacent parcels. The underground improvements include excavation, specialized aggregates, porous lining, drain rock and piping. Above ground improvements are designed to mask the purpose of the area and include a sand filled volleyball court, concrete walkways, grassy open areas and landscape plantings.

The acquisition cost of the lease was \$175,000. The current assignment of lease is part of a larger transaction involving the purchase of the Coconut Grove Marketplace. The assignment of lease is ancillary to the larger transaction and the consideration being realized is equal to the acquisition cost paid.

The covenants of the lease allow the Board to condition its consent on payment by the Lessee of a premium based on the amount by which the consideration exceeds the Adjusted Depreciated Cost of Improvements as calculated in accordance with the Assignment of Lease Evaluation Policy.

Calculation begins with the acquisition cost adjusted from the year of acquisition to the present; the cost adjustment is derived from statistics published by the U.S. Bureau of Labor Statistics. Then accumulated depreciation, as determined on a straight-line basis, is subtracted resulting in the Adjusted Depreciated Cost of Improvements.

ASSIGNMENT PREMIUM CALCULATIONS: GL No. S-5188

Net Consideration:	\$ 175,000
Acquisition cost:	\$ 175,000
CCI (most recent):	289.5
CCI (base year):	285.5 (2016)
Expired Term:	24 mos. (time since acquisition)
Whole Term:	273 mos. (remaining at time of acquisition)
Expired Term of Lease:	328 mos. = 27.33 years

1. Adjusted costs of improvements:

Acquisition Cost	x	$\frac{\text{CCI (most recent)}}{\text{CCI (base year)}}$	
\$175,000	x	$\frac{289.5}{285.5}$	= \$177,452

2. Depreciation:

\$177,452	x	$\frac{24 \text{ mos.}}{273 \text{ mos.}}$	= \$ 15,600
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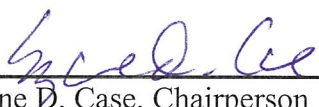
3. Adjusted Depreciated Cost of Improvements:

\$177,452	-	\$ 15,600	= \$161,852
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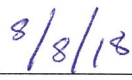
4. Premium Calculation:

Net Consideration	\$ 175,000
Less Adjusted Depreciated Cost of Improvements	<u>\$ 161,852</u>
Excess	\$ 13,148
Premium Percentage based on <u>Expired Term of Lease</u>	<u>x 25%</u>
Calculated Premium	\$ 3,287

Approved/Disapproved:



Suzanne D. Case, Chairperson



Date

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